

**COMMONWEALTH OF VIRGINIA**

**WASTE MANAGEMENT BOARD AND  
THE DEPARTMENT OF ENVIRONMENTAL QUALITY**

**In re.**

**E. I. DU PONT DE NEMOURS  
AND COMPANY**

**FORMER DUPONT BAUGHER  
FARM FACILITY**

**REMEDICATION  
CONSENT ORDER**

**DATE: \_\_\_\_\_, 2019**

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## SECTION I. BACKGROUND

E.I DuPont de Nemours and Company (“DuPont”) purchased the Baugher Farm site (“Site”) in 1948 for the original purpose of water supply development for the former DuPont Waynesboro Plant. Ultimately, the site was used for waste management and recycling operations. In 2004, the Baugher Farm property ownership was transferred from DuPont to Invista.

The former DuPont Baugher Farm site is located approximately 1.8 miles south of the former DuPont Waynesboro Plant, and is situated along the west toe of the Blue Ridge Mountains. It is characterized by a topographic high in the center of the facility, which drops off approximately 65 feet to the northwest towards the South River. Both surface water and groundwater flow to the north where an intermittent spring discharges on the north side of the property. Significant features at the site include two reconsolidated and closed ash/debris landfills, two groups of small buildings and wooded areas.

The property was used for the management of both solid and liquid wastes generated at the Waynesboro Plant beginning in 1950, a description of the management techniques and waste streams present is found in Appendix D “Historical Activities,” also attached hereto and incorporated by reference.

Beginning in 1982, various inspections and sampling activities have been conducted at the site. A description of these activities is found in Appendix D “Historical Activities.”

DuPont has implemented corrective actions at the site to mitigate potential releases to the environment. A summary of actions complete to date is found in Appendix D “Historical Activities.”

1. Purpose of Consent Order. This is a Consent Order issued under the authority of Va. Code §§ 10.1-1402(19) - (21), 10.1-1404(B)(3), 10.1-1186(2), and 10.1-1455(F), and in consideration of the Virginia Voluntary Remediation Program 9 VAC 20-160 (“VRP”) between the Virginia Department of Environmental Quality (“DEQ”), pursuant to authority delegated by the Virginia Waste Management Board (“Board”), and DuPont (collectively “Parties”), for the purpose of memorializing previously conducted site investigations and completing the design and implementation of Remedial Actions associated with a Release of Waste Material within the jurisdiction of the Board at the Site.

This Consent Order establishes a framework for evaluating all historical releases at the Site to ensure that all known environmental liabilities on Site are addressed. To accomplish Work required under this Consent Order, the Parties will establish a schedule for Work completion.

2. Agency Oversight. The Work conducted by DuPont pursuant to this Consent Order is subject to concurrence, oversight and enforcement by DEQ. DEQ is an agency of the Commonwealth of Virginia authorized to act on behalf of, and in the best interest of, the Board to oversee the investigation and/or remediation of a Release or threatened Release of any Waste Material at or from the Site. The Work conducted by DuPont shall be consistent with this Consent Order, and any appropriate guidance documents, as applicable.

3. Cost Reimbursement. DEQ seeks reimbursement of Costs incurred and/or to be incurred for administration and oversight of this Consent Order at the Site pursuant to Va. Code §§ 10.1-1402(19) - (21), 10.1-1404(B)(3), 10.1-1186(2), and 10.1-1455(F). The terms of the reimbursements are more specifically described in the Cost Reimbursement Agreement (Appendix C), attached hereto and incorporated by reference.

4. No Admission of Liability. DEQ and DuPont recognize that this Consent Order has been negotiated in good faith and that the actions undertaken by DuPont in accordance with this Consent Order do not constitute an admission of liability. DuPont does not admit, and retains the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Consent Order, the validity of any findings of fact, conclusions of law, and determinations in this Consent Order. DuPont agrees to comply with and be bound by the terms of this Consent Order and further agrees that it will not contest the basis or validity of this Consent Order or its terms.

5. Recorded Release of Waste Material. A documented Release of Waste Material, including mercury, barium, dimethyl formamide, organic constituents, arsenic, nickel, ammonia and other Waste Materials occurred at the Site. The release of the mercury, barium, dimethyl formamide, organic constituents, arsenic, nickel, ammonia and possibly other Waste Materials are substances within the jurisdiction of DEQ.

6. Intent of the Parties. DuPont has expressed its intent to pursue a Consent Order to remediate Releases of Waste Material at the Site. The Parties and their representatives have met on several occasions to discuss investigation, site evaluation, various Releases of Waste Material, and corrective actions previously conducted. DuPont agrees that a Remediation Consent Order, which memorializes prior corrective actions or future corrective actions, is desired to address Releases of Waste Material at the Site. The parties intend to follow the VRP process for all Work at the Site, including use of "remediation levels" and completing "remediation" as such terms are defined in 9 VAC 20-160-10.

7. DEQ Determination. Based on available information, DEQ determines that the Work will be properly and promptly completed by DuPont if conducted in accordance with the requirements of this Consent Order and its allied appendices and documents incorporated by reference. DuPont acknowledges, and DEQ by entering this Consent Order finds, that this Consent Order has been negotiated in good faith and implementation of the Consent Order will expedite the cleanup of the Site, and that this Consent Order is fair, reasonable, and in the public interest. The actions required by this Consent Order are consistent with the VRP, and are expected to expedite effective Remedial Action and minimize litigation.

## SECTION II. JURISDICTION

1. Definitions of "Facility" and "Person." The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9). DuPont is a corporation, which is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Va. Code § 10.1-1400.

2. Definitions of “Hazardous Substance” and “Contaminants.” The contaminants found at the Site include “hazardous substance(s)” that are within the meaning of Va. Code § 10.1-1400, and 9 VAC 20-81-10, and “contaminants” as defined in 9 VAC 20-160-10.

3. Authority to Regulate. DEQ has jurisdiction over the Site pursuant to authority delegated by the Board, Va. Code §§ 10.1-1402(19) - (21), 10.1-1404(B)(3), 10.1-1186(2), and 10.1-1455(F). DuPont waives all objections and defenses that it may have to jurisdiction of DEQ, and shall not challenge the terms of the Consent Order or DEQ’s jurisdiction to enter and enforce this Consent Order. Va. Code § 10.1-1455 of the Waste Management Act provides for an injunction for any violation of the Waste Management Act, associated regulations, an order, or permit condition, and provides for a civil penalty up to \$32,500 per day for each violation of the Waste Management Act, regulation, order, or permit condition. In addition, Va. Code § 10.1-1455 (F)-(G) authorizes DEQ to issue orders to any person to comply with the Waste Management Act and regulations, including the imposition of a civil penalty for violations of up to \$100,000. Va. Code § 10.1-1186 authorizes the Director of DEQ to issue special orders to any person to comply with the Waste Management Act and regulations, and to impose a civil penalty of not more than \$10,000.

### SECTION III. PARTIES BOUND

1. Parties. This Consent Order applies to and is binding upon DEQ and DuPont, including DuPont’s successors and assigns. No change in ownership or legal status of DuPont, including, but not limited to, any transfer of assets or property, real or personal, shall in any way alter any requirements or responsibilities under this Consent Order unless DEQ agrees in writing, to such change. The signatories to this Consent Order certify that they are fully authorized to execute and legally bind the Parties they represent.

2. Contractors and Agents. DuPont shall within (60) sixty days after the Effective Date of this Consent Order or the date of retaining their services, whichever is later, provide a copy of this Consent Order to each contractor hired to perform the Work and to each person representing DuPont with respect to the Site or the Work. DuPont shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Order. DuPont contractors shall within (90) ninety days after the Effective Date of this Consent Order or the date of retaining their services, whichever is later, provide written notice of the Consent Order to all subcontractors hired to perform any portion of the required Work. DuPont shall be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this Consent Order.

### SECTION IV. DEFINITIONS

Unless otherwise expressly provided in this Consent Order or the context clearly indicates otherwise, terms used in this Consent Order that are defined by the Virginia Waste Management Act (“VWMA”), Va. Code §§ 10.1-1400 – 10.1-1457, shall have the meaning assigned to them in the VWMA. When terms listed below are used in this Consent Order, the following definitions shall apply solely for this Consent Order.

“**Administrative Process Act**” or “**APA**” means Va. Code § 2.2-4000 *et seq.*

“**Board**” means the Virginia Waste Management Board, a permanent citizen board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 1401. The term

“Board” is inclusive of the Virginia Department of Environmental Quality and its delegated authority to act on behalf of, and in the best interest of, the Board to oversee and administer the Work described in this Consent Order.

“Certificate” means a written certification of satisfactory completion of remediation issued by DEQ pursuant to Va. Code § 10.1-1232.

“Commonwealth” means the Commonwealth of Virginia.

“Consent Order” means this Consent Order, also known as a “Remediation Consent Order,” including all appendices attached hereto and documents incorporated by reference. In the event of a conflict between this Consent Order and any appendix or other documents, the terms and requirements of this Consent Order shall control.

“Costs” means all currently-due and documented administrative and oversight expenses that the Board, and DEQ, may incur in monitoring and supervising performance of any Work to determine whether such performance is consistent with all requirements of this Remediation Consent Order, including costs incurred in reviewing plans, reports, and other deliverables, as well as costs incurred in overseeing implementation of the Work, including, but not limited to, payroll costs, contractor costs, travel costs, sampling costs, laboratory costs, and the costs incurred to determine performance with all requirements necessary to successfully complete the Work.

“Day” means a calendar day unless expressly stated otherwise. In computing any period of time under this Consent Order where the last day would fall on a Saturday, Sunday, or state or federal holiday, the period shall run until the close of business of the next working day.

“Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183, and any successor departments or agencies of the Commonwealth of Virginia.

“Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

“DuPont” means E. I. du Pont de Nemours and Company, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. DuPont is a “person” within the meaning of Va. Code § 10.1-1400.

“Effective Date” means the date upon which this Consent Order is executed by the Department of Environmental Quality.

“Institutional Controls” or “ICs” mean Proprietary Controls, and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, and/or resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land, water, and/or resource use to implement, ensure non-interference with, or ensure the protectiveness of the Remedial Action;

and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site.

**“Institutional Control Implementation Plan”** or **“ICIP”** means the plan for implementing, maintaining, monitoring, and reporting on Institutional Controls.

**“Interest”** means interest at the rate specified for interest on investments of the Commonwealth of Virginia as determined by the DEQ Office of Financial Assurance, compounded annually on October 1 of each year. The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

**“Notice of Completion”** shall have the meaning as set forth in Section XII of this Consent Order.

**“Parties”** means the Board, DEQ, and DuPont.

**“Proprietary Controls”** mean easements or covenants running with the land that: (a) limit land, water, or resource use and/or provide access rights; and (b) are created pursuant to common or statutory law by an instrument that is recorded by the landowner in an appropriate land records office. Any and all Proprietary Controls concerning the Site shall conform to the NCP and the Virginia Uniform Environmental Covenants Act, Va. Code §§ 10.1-1238 *et seq.*, 9 VAC 15-19-10 *et seq.*

**“RCRA”** means the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901-6992, also known as the Resource Conservation and Recovery Act.

**“Release”** means any spill, leak, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, dumping or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Waste Material), or any mismanagement of any Waste Material. A Release also means any substantial threat of release as described in 9 VAC 20-81-10.

**“Remedial Action”** means all work and activities necessary to complete the Work as set forth in Appendix B and any additional Work pursuant to Section VI.3 of this Consent Order.

**“Site”** shall mean the DuPont Former Baugher Farm Facility. The Site Description (Appendix A) is attached hereto and incorporated by reference.

**“Supervising Contractor”** means the principal contractor retained to supervise and direct the implementation of the Work under this Consent Order.

**“Transfer”** means to sell, assign, convey, lease, mortgage or grant a security interest by operation of law.

“**Virginia Voluntary Remediation Program**” or “**VRP**” means the Voluntary Remediation Program established by DEQ under the authority of Va. Code § 10.1-1232 and 9 VAC 20-160-130.

“**Virginia Waste Management Act**” means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 4 (Va. Code §§ 10.1-1426 through 10.1-1429) of the Virginia Waste Management Act addresses Hazardous Waste Management.

“**Waste Material**” means: (a) any “hazardous substance” under Va. Code § 10.1-1400, 9 VAC 20-81-10; (b) any “pollutant or contaminant” under 9 VAC 20-81-10; (c) any “solid waste” under Va. Code § 10.1-1400, 9 VAC 20-81-10 or Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (d) other “waste” as that term is defined under Va. Code § 10.1-1400.

“**Work**” or “**Work to be Performed**” means all activities and obligations required under this Consent Order.

## SECTION V. GENERAL PROVISIONS

1. Objectives. The objectives of the Parties in entering into this Consent Order are to protect human health and the environment by completing a Remedial Action at the Site, and to pay the Costs incurred by DEQ.

2. Commitments. DuPont shall finance and perform the Work in accordance with this Consent Order, and other plans and modifications approved by DEQ until the Work is complete. DuPont shall pay DEQ for their Costs as provided in this Consent Order and the Cost Reimbursement Agreement attached in Appendix C.

3. Severability. If any provision of this Consent Order is found to be unenforceable for any reason, the remainder of the Consent Order shall remain in full force and effect.

4. Permitting. This Consent Order does not relieve a participant from the obligation to comply with all applicable federal, state and local laws, ordinances and regulations related to the investigation and remediation (e.g., waste management and disposal, erosion and sedimentation controls, air emission controls, and activities that impact wetlands and other sensitive ecological habitats) undertaken by the participant pursuant to VRP regulations. It is the participant's responsibility to ensure that the investigation and remediation activities (e.g., waste management and disposal, erosion and sedimentation controls, air emission controls, and activities that impact wetlands and other sensitive ecological habitats) comply with all applicable federal, state, and local laws and regulations.

6. APA Due Process. DuPont declares it has received fair and due process under the Administrative Process Act, Va. Code § 2.2-4000 *et seq.* and the Virginia Waste Management Act as to this Consent Order, Va. Code § 10.1-1400 *et seq.*, and that it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of,

any action taken by DEQ to modify, rewrite, amend, revoke, terminate or enforce this Consent Order.

## SECTION VI. PERFORMANCE OF THE WORK

1. Selection of Supervisory Contractor. All aspects of the Work to be performed pursuant to this Consent Order shall be under the direction and supervision of DuPont. Within (60) sixty days after the Effective Date of this Consent Order, DuPont shall notify DEQ in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. DuPont shall demonstrate that the proposed Supervising Contractor has a quality assurance system that complies with ANSI/ASQC E4-1994, *Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs* (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with *EPA Requirements for Quality Management Plans (QA/R-2)* (EPA/240/B-01/002, March 2001, re-issued May 2006) or equivalent documentation as determined by DEQ. DEQ shall, within (30) thirty days of receipt of such notice proposing a Supervising Contractor, issue a disapproval of the proposal, if appropriate. In the event DEQ does not issue a notice of disapproval within (30) thirty days, such proposal shall be deemed approved. If at any time thereafter DuPont proposes to change a Supervising Contractor, such proposal is subject to the same terms, conditions, and option by DEQ to disapprove, as provided herein.
2. Work to be Performed. The Work to be Performed (Appendix B) for the Remediation Consent Order is hereby incorporated by reference and is an enforceable part of this Consent Order. DuPont shall conduct the Work in accordance with the provisions of this Consent Order, the VRP, and relevant guidance.
3. Additional Work. DEQ may determine that, in addition to tasks defined in the initially approved Work to be Performed, other additional actions may be necessary to accomplish the objectives of this Consent Order. DuPont agrees to reasonably consider performing the work in addition to Work required by the initially approved Work to be Performed, including any approved modifications, if DEQ determines that such actions are necessary. DuPont shall confirm whether it will perform the additional work in writing to DEQ within (10) ten days of receipt of the DEQ request. If DEQ objects to DuPont's determination pursuant to this Paragraph, DEQ may seek dispute resolution pursuant to Section XVII (Dispute Resolution). The Work to be Performed shall be modified in accordance with the final resolution of the dispute. If additional work is determined necessary following dispute resolution, DuPont shall complete the additional work according to the standards, specifications, and schedule set forth or approved by DEQ.
4. Modification and Further Response. Nothing in this Section shall be construed to limit the Parties from seeking modification of the Work to be Performed for good cause. Nothing in this Section shall be construed to limit DEQ's authority to require performance of further response actions as otherwise provided in this Consent Order.

5. Off-Site Shipment of Waste Material. DuPont may transport Waste Material from the Site to an off-Site facility properly permitted to accept such Waste Material in accordance any applicable local, state, or federal laws or regulations. It shall be DuPont's responsibility to properly manage the Waste Material.

## SECTION VII. QUALITY ASSURANCE, SAMPLING, AND DATA

1. Quality Assurance Guidance. DuPont shall use quality assurance, quality control, and chain of custody procedures for all samples in accordance with *EPA Requirements for Quality Assurance Project Plans (QA/R5)* (EPA/240/B-01/003, March 2001, reissued May 2006), *Guidance for Quality Assurance Project Plans (QA/G-5)* (EPA/240/R-02/009, December 2002), and subsequent amendments to such guidelines.

2. Quality Assurance Project Plan. All field sampling and monitoring activities performed under this Consent order will be in accordance with the Quality Assurance Project Plan ("QAPP") which is included as Appendix D of the *RCO Data Gap Investigation Workplan* dated January 2017. The QAPP includes data quality objectives, laboratory analytical procedures, identification and use of Virginia Environmental Laboratory Accreditation Program laboratories, field equipment maintenance and calibration, sampling procedures, record keeping, and data assessment procedures. Unless otherwise agreed to by DEQ, DuPont shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Consent Order perform such analyses in accordance with accepted methods provided SW-846, Test Methods for Evaluating Solid Waste: Physical/Chemical Methods Compendium.

3. Split and Duplicate Samples. Upon request, DuPont shall allow split or duplicate samples to be taken by DEQ. DuPont shall notify DEQ not less than (10) ten days in advance of any sample collection unless shorter notice is agreed to by DEQ. In addition, DEQ may take any additional samples necessary to assure the performance of this Consent Order. Upon request, DuPont may take split or duplicate samples of any samples DEQ requires for oversight or implementation of the Work.

4. Sample Results. Analytical results from post closure groundwater monitoring and spring monitoring activities will be reported in accordance with the current revision of the Groundwater Monitoring Plan and Post Remediation Monitoring Plan, respectively. Unless otherwise agreed to by DEQ, DuPont shall submit to DEQ copies of the results of all other sampling and/or tests, or other raw data obtained with respect to the Site or the implementation of this Consent Order within (30) thirty days of receipt of validated results of such sampling and/or test, or other data.

## SECTION VIII. ACCESS

1. Access to the Site. DuPont has advised DEQ that DuPont does not own or have any other real property interest in the Site. DuPont will be responsible for using commercially reasonable efforts to secure and maintain access to the Site for the performance of the Work. Additionally, commencing on the Effective Date of this Consent Order, DuPont will use commercially reasonable efforts to obtain access to the Site at all reasonable times for DEQ, their representatives, contractors, and subcontractors, to conduct any activity regarding the Consent

Order including, but not limited to, the following activities: (a) monitoring the Work; (b) verifying any data or other information submitted to DEQ; and (c) assessing DuPont's compliance with the Consent Order. Failure by DuPont to secure access may constitute a force majeure event.

#### **SECTION IX. APPROVAL OF PLANS, REPORTS, AND OTHER DELIVERABLES**

1. Initial Submissions. After review of any plan, report or other deliverable required for approval pursuant to this Consent Order, DEQ shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) disapprove, in whole or in part, the submission; or (d) any combination of the foregoing. DEQ may modify the initial submission, to cure deficiencies if it determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work or cure of deficiencies is otherwise not substantial.
2. Resubmissions. Upon DEQ's disapproval with conditions of a submission, DuPont shall, within (30) thirty days or such longer time as specified by DEQ, correct the deficiencies and resubmit the plan, report or other deliverable for review.
3. Incorporation of Approved Submittal. Any plan, report or other deliverable, or any portion thereof approved by DEQ, shall be incorporated by reference into and enforceable under this Consent Order.

#### **SECTION X. PROJECT COORDINATORS**

Identification of Project Coordinators. Within (30) thirty days after the Effective Date of this Consent Order, DuPont and DEQ will notify each other, in writing, of the name, address, telephone number, and email address of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator is changed, the identity of the successor will be given to the other Party at least (10) ten working days before the change occurs, if practical, but no later than 20 days of a new designation. The DuPont Project Coordinator shall have the technical expertise sufficient to adequately oversee all aspects of the Work.

#### **SECTION XI. PERFORMANCE GUARANTEE**

1. Selection of Performance Guarantee. In order to ensure the full and final completion of the Work, DuPont shall establish and maintain a performance guarantee, initially in the amount of \$1,395,235.86 for the benefit of DEQ (hereinafter "Estimated Cost of the Work"). In the event of an increase or decrease in the Estimated Cost of Work, the performance guarantee shall be adjusted commensurate with such increase or decrease. The performance guarantee shall be in the form of one or more of the following mechanisms:

(a) a surety bond unconditionally guaranteeing payment and/or performance of the Work; The bond shall guarantee that the owner or operator will:

1. Perform final closure, post-closure care, or corrective action in accordance with the closure or post-closure plan and other requirements in any permit for the facility;
2. Perform final closure, post-closure care, or corrective action following an order to begin closure, post-closure, or corrective action issued by the director or by a court, or following issuance of a notice of termination of the permit; or
3. Provide alternate financial assurance as specified in this article within 60 days after receipt by the director of a notice of cancellation of the bond from the surety.

(b) one or more irrevocable letters of credit, payable to and at the direction of DEQ; The letter of credit shall be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for closure, post-closure care, or corrective action, whichever is applicable. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year. The issuing institution shall be a bank or other financial institution that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by the Commonwealth of Virginia, by a federal agency, or by an agency of another state.

(c) a trust fund established for the benefit of DEQ that is administered by a trustee; The trustee for the trust fund shall be a bank or financial institution that has the authority to act as a trustee and whose trust operations are regulated and examined by the Commonwealth of Virginia.

(d) an insurance policy that identifies DEQ as a beneficiary; The insurance policy shall guarantee that funds will be available to close the waste material disposal unit whenever final closure occurs, to provide post-closure care for the waste material disposal unit whenever the post-closure care period begins, or to perform corrective action whenever the corrective action period begins, whichever is applicable. The policy shall also guarantee that once closure, post-closure care, or corrective action begins, the insurer will be responsible for paying funds to the owner or operator or other person authorized to conduct closure, post-closure care, or corrective action up to an amount equal to the face amount of the policy.

(e) a demonstration by DuPont that they meet the financial test criteria of 40 C.F.R. 264.143(f) as incorporated by 9 VAC 20-60 *et seq.* with respect to the Estimated Cost of the Work; or

(f) a written guarantee to fund or perform the Work executed in favor of DEQ by a direct or indirect parent company of DuPont provided that such company demonstrate to the satisfaction of DEQ that it satisfies the financial test criteria for owners and operators in 40 C.F.R. 264.143(f) or 40 C.F.R. 265.145, as incorporated by 9 VAC 20-60 *et seq.*, with respect to the Estimated Cost of the Work.

2. Execution of Performance Guarantee. Within (30) thirty days after the Effective Date, DuPont shall execute all instruments or other documents required in order to make the selected performance guarantee(s) legally binding. Within (30) thirty days after the Effective Date, DuPont shall submit copies of all executed instruments or other documents required in order to make the selected performance guarantee(s) legally binding to DEQ.

3. Change of Form of Performance Guarantee. If, after the Effective Date, DuPont changes the form or terms of any performance guarantee(s), DuPont shall provide 30 days prior notice of such change to DEQ. Such change shall be consistent with the terms and conditions herein.

## SECTION XII. CERTIFICATION OF COMPLETION

1. Completion of Remedial Action. Upon completion of the Work, and DEQ approval that the Work is complete, in accordance with this Consent Order, DEQ will issue a Certificate, which shall include the requirements for post closure monitoring and spring monitoring as provided in Appendix B. DuPont will use commercially reasonable efforts to cause the owner of the Site to allow the recordation in the Office of the Clerk of the Circuit Court of [County or City where the property is located] the Certificate and an environmental covenant in accordance with the Virginia Uniform Environmental Covenants Act, Va. Code §§ 10.1-1238 *et seq.*, 9 VAC 15-19-10 *et seq.* to impose any Institutional Controls on the Site as required by the Certificate within the time period specified by the Certificate. DuPont will provide evidence reasonably satisfactory to DEQ of the Site owner's agreement to allow the recordation of the Certificate and environmental covenants prior to DEQ's issuance of the Certificate. DuPont shall provide certified copies of the recorded documents to DEQ within forty-five (45) days of recordation. Upon receipt of such certified copies of the recorded documents DEQ will issue a written certification to DuPont that the Work is complete ("Notice of Completion").

## SECTION XIII. EMERGENCY RESPONSE

1. Releases of Waste Material. In the event of any action or occurrence during the performance of the Work that causes or threatens a release of Waste Material from the Site that may present an immediate threat to human health or the environment, DuPont shall immediately take all appropriate action to prevent, abate or minimize such release or threat of release, and shall immediately notify the DEQ Project Coordinator, or Alternate Project Coordinator, and any other local, state or federal official or entity required to be notified. If either of these persons is unavailable, DuPont shall notify the DEQ Pollution Response Program ("PRP") Unit at 800.592.5482. DuPont shall take all such necessary response actions in consultation with DEQ's Project Coordinator or alternate representative. Nothing in this provision shall limit, alter, amend, or relieve DuPont of any reporting requirements pursuant to local, state, or federal law or regulations and any such notification made pursuant to this provision shall not be construed to be effective for any other legally required notification including any required notifications to DEQ.

2. State Response. Nothing in the preceding paragraph or in this Consent Order shall be deemed to limit any authority of DEQ to take all appropriate action to protect human health and the environment or to prevent, abate, respond to or minimize an actual or threatened release of Waste Material on, at or from the Site. Further, nothing in the preceding paragraph or this Consent Order shall be deemed to limit any cost recovery or reimbursement associated with such action.

#### SECTION XIV. REIMBURSEMENT OF COSTS

1. Reimbursement of Costs. DuPont shall arrange for the reimbursement of DEQ Costs for administration and oversight of the Work pursuant to the Cost Reimbursement Agreement between DuPont and DEQ and hereby incorporated by reference as Appendix C (Cost Reimbursement Agreement). DEQ shall account and itemize all incurred Costs along with a good faith estimate of Costs to be incurred for oversight.

2. Payment Instructions. Payments to DEQ shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

The check, certified check, money order or cashier's check shall reference a site identification number and the name of the Site.

3. Insufficient Funds. In the event that funds provided by DuPont are insufficient to cover all Costs, DEQ will notify DuPont of such insufficiency and DuPont shall, within (60) sixty days after receipt of such notice, and subject to availability of funds, rectify such insufficiency in an adequate amount to cover such Costs.

4. Excess Funds. Any funds submitted by DuPont to cover Costs that are unused by DEQ and remain after Certification of Completion shall be remitted to DuPont within (60) sixty days of the issuance of a Certificate of Completion.

#### SECTION XV. NON-LIABILITY, INDEMNIFICATION, AND INSURANCE

1. Non-Liability of DEQ. DEQ shall not be deemed a party to any contract involving DuPont and relating to activities at the Site and shall not be liable for any claim or cause of action arising from or on account of any act, or the omission of DuPont, its officers, employees, contractors, receivers, trustees, agents or assigns, in carrying out the activities required by this Consent Order.

2. Indemnification of the Commonwealth of Virginia. The Commonwealth of Virginia, Board, and DEQ do not assume any liability by entering into this Consent Order. DuPont shall indemnify, save, and hold harmless the Commonwealth of Virginia, Board, DEQ, and their officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of acts or omissions of DuPont, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out the activities described in this Consent Order. Further, DuPont agrees to pay the Commonwealth of Virginia, Board, and DEQ all costs they may incur, including, but not limited to, attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims based on acts or omissions of DuPont their

officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Order.

4. No Agency or Contractual Party Status. The Commonwealth of Virginia, Board, and DEQ shall not be held out as a party to any contract entered into by or on behalf of DuPont in carrying out the activities described in this Consent Order. Neither DuPont nor any such contractor shall be considered an agent of the Commonwealth of Virginia, Board, or DEQ.

## SECTION XVI. FORCE MAJEURE

1. Force Majeure Defined. For purposes of this Consent Order, a force majeure event is defined as any event arising from causes beyond the control of DuPont, of any entity controlled by DuPont or of DuPont contractors that delays or prevents the performance of any obligation under this Consent Order, despite best efforts to fulfill the obligation. The requirement that DuPont exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure, best efforts to address the effects of any potential force majeure as it is occurring, and best efforts to minimize any adverse effects following the potential force majeure event.

2. Notice of Force Majeure Event. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Order for which DuPont intends or may intend to assert a claim of force majeure, DuPont shall notify DEQ’s Project Coordinator, or Alternate Project Coordinator within (5) five days of when DuPont first knew that the event might cause a delay. Within (10) ten days thereafter, DuPont shall provide in writing to DEQ, an explanation and description of the reasons for the delay, the anticipated duration of the delay, all actions taken or to be taken to prevent or minimize the delay, a schedule for implementation of any measures to prevent or mitigate the delay, a rationale for attributing such delay to a force majeure, and a statement as to whether such event may cause or contribute to an endangerment to human health or the environment.

3. Effect of Force Majeure Event. If DEQ agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Consent Order that are affected by the force majeure shall be extended for such time as is reasonably necessary to complete the delayed obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not extend the time for performance of any other obligation. If DEQ does not agree that the delay or anticipated delay has been or will be caused by a force majeure, DEQ shall provide such notification in writing. In the event that DuPont disagrees with such notification, DuPont may seek to resolve such disagreement in accordance with Section XVII (Dispute Resolution).

## SECTION XVII. DISPUTE RESOLUTION

1. Limits of Dispute Resolution. Unless otherwise expressly provided for in this Consent Order, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes regarding this Consent Order. However, the procedures set forth in this Section shall not

apply to actions by the Commonwealth of Virginia, Board, or DEQ to enforce the substantive obligations of DuPont to perform in accordance with the requirements of this Consent Order.

2. Informal. Any dispute regarding this Consent Order shall first be the subject of informal negotiations between the Parties to the dispute. The period for informal negotiations shall not exceed (20) twenty days from the time the dispute arises, unless it is modified by written agreement of the Parties. The dispute shall be considered to have arisen when one Party sends the other Party a written Notice of Dispute.

3. Division Director Review. In the event informal negotiations are not successful in resolving a dispute, DuPont may present written notice of such dispute to the DEQ Director of the Division of Land Protection and Revitalization ("Division Director"), setting forth specific points of dispute and the position of DuPont. This written notice shall be submitted no later than (10) ten days after expiration of the (20) twenty day informal negotiation period. Within (10) ten days of receipt of such a written notice, the Division Director shall provide a written response to DuPont setting forth DEQ's position and the basis thereof. If the Division Director concurs with the position of DuPont, notification shall be provided in writing and this Agreement shall be modified to include any necessary extensions of time or variances of work.

4. DEQ Director Review. If DEQ and DuPont are still in disagreement after a decision is issued from the Division Director, the DEQ Director shall make a determination regarding the dispute based upon the requirements of this Consent Order and all information previously made available to the Division Director. Notwithstanding any other provisions of this Consent Order, no action or decision by DEQ, including, without limitation, decisions of the DEQ Director, pursuant to this Consent Order, shall constitute final agency action giving rise to any right to judicial review prior to DEQ's initiation of judicial action to compel DuPont's compliance with this Consent Order.

5. Performance of Requirements not in Dispute. Use of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation under this Consent Order not directly in dispute.

## **SECTION XVIII. COVENANTS BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY**

1. Covenants by DEQ. In consideration of the actions to be performed and the payments to be made by DuPont under this Consent Order, and except as otherwise specifically provided herein, DEQ covenants not to sue or to take administrative action against DuPont pursuant to the Virginia Waste Management Act, Va. Code §§ 10.1-1400 – 10.1-1457, and/or RCRA, 42 U.S.C. §§ 6901-6992, for the Work performed pursuant to this Consent Order or for recovery of Costs relating to the Release of Waste Material at the Site. This covenant shall take effect upon receipt by DEQ of all payment of Costs required by this Consent Order and issuance of a Notice of Completion by DEQ. These covenants are conditioned upon the satisfactory performance by DuPont of all required obligations under this Consent Order. These covenants shall extend to DuPont, their successors, and assigns.

2. General Reservations of Rights. DEQ reserves, and this Consent Order is without prejudice to, all rights against DuPont with respect to all matters not expressly included within DEQ's covenant. Notwithstanding any other provision of this Consent Order, DEQ reserves all rights against DuPont with respect to: (a) liability for failure to meet a requirement of this Consent Order; (b) liability arising from the past, present or future disposal, release or threat of release of Waste Material outside of the Site; (c) liability for costs not included within the definition of Costs; (d) liability for performance of response action(s) other than the Work described in this Consent Order; (e) liability based on DuPont transportation, treatment, storage, disposal or arrangement for transportation, treatment, storage or disposal of Waste Material at or in connection with the Site; (f) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; (g) criminal liability; (h) liability for violations of federal or state law that occur during or after implementation of the Work; (i) claims for contribution other than those claims expressly released by DEQ.

#### **SECTION XIX. COVENANTS BY DUPONT**

Covenants by DuPont. Subject to and except as otherwise specifically provided in this Consent Order, DuPont covenants not to sue and agrees not to assert any claims or causes of action against the Commonwealth of Virginia, and DEQ with respect to the Site and this Consent Order, including, but not limited to: (a) any direct or indirect claim for reimbursement of any Costs; (b) any claims under VWMA, the Brownfields Revitalization Act or RCRA regarding the Site and this Consent Order; and (c) any other claims arising out of response actions at or in connection with the Site and this Consent Order.

#### **SECTION XX. EFFECT OF SETTLEMENT**

Reservation for Non-Parties. Nothing in this Consent Order shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Order. Each of the Parties expressly reserves any and all rights, including, but not limited to, defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction or occurrence relating in any way to the Site against any person not a Party hereto.

#### **SECTION XXI. ACCESS TO INFORMATION**

Availability of Records. DuPont shall provide to DEQ, upon request, copies of all records, reports, documents, and other information (including materials in electronic form) (hereinafter referred to as "Records") within their possession or control or that of their contractors or agents relating to the Work or to the implementation of this Consent Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work, but not including any Records that are protected by attorney-client privilege or work product doctrine unless DuPont is compelled to provide the same by court order. DuPont shall also make available to DEQ, for purposes of investigation, information gathering or testimony, their employees, agents or representatives with knowledge of relevant facts concerning the performance of the Work.

## SECTION XXII. RETENTION OF RECORDS

1. Retention Term. For a term of (10) ten years from the receipt of a Notice of Completion, DuPont shall preserve and retain all non-identical copies of records, including records in electronic form, now in its possession or control, or that come into its possession or control, that relate to the Site, but not including any records of which copies were provided to DEQ. Contractors and agents of DuPont shall also preserve for the same period of time all non-identical copies of the last draft or final version of any records, including records in electronic form, now in its possession or control, or that come into its possession or control, that relate in any manner to the performance of the Work, but not including any records of which copies were provided to DEQ.

2. Destruction of Records. At the conclusion of the record retention period, DuPont shall notify DEQ, at least (90) ninety days prior to the destruction of any such records DuPont is required to retain pursuant to Section XXII.1 and, upon request by DEQ within such ninety (90) day period, shall deliver any such records to DEQ.

## SECTION XXIII. NOTICES AND SUBMISSIONS

1. Identification of Individuals Receiving Notice. Whenever a written notice, report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below unless those individuals or their successors give notice of a change. All notices and submissions shall be considered effective upon receipt unless otherwise provided. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Order.

DEQ:

Office of Remediation Programs Director  
Virginia Department of Environmental Quality  
P.O Box 1105  
Richmond, VA 23218

DuPont:

Environmental Counsel  
E.I DuPont de Nemours and Company  
Chestnut Run Plaza 735  
PO Box 2915  
974 Centre Road  
Wilmington, DE 19805

Any notice, report, certification, data presentation, or other document submitted by DuPont pursuant to this Consent Order which discusses, describes, demonstrates, or supports any finding or makes any representation concerning compliance or noncompliance with any requirement of this Consent Order shall be signed by a responsible agency officer or a duly authorized representative of a responsible agency officer.

#### SECTION XXIV. RETENTION OF JURISDICTION

1. DEQ Retention of Jurisdiction. DEQ retains jurisdiction over the subject matter of this Consent Order for the duration of performance and for purposes of enabling any of the Parties to request such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Order, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XVII (Dispute Resolution).
2. Judicial Jurisdiction and Venue. DuPont consents to jurisdiction and venue in the United States District Court, Eastern District of Virginia (Richmond), for any civil action taken to enforce the terms of this Consent Order.

#### SECTION XXV. APPENDICES

The following appendices are attached to and incorporated into this Consent Order:

- Appendix A: Site Description
- Appendix B: Work to be Performed
- Appendix C: Cost Reimbursement Agreement
- Appendix D: Historical Activities

#### SECTION XXVI. COMMUNITY INVOLVEMENT

1. Participation. If requested by DEQ, DuPont shall participate in reasonable community involvement activities relating to the Work. DEQ will determine the appropriate role for DuPont and DuPont shall also cooperate with DEQ in providing information regarding the Work to the public. As requested by DEQ, DuPont shall participate in the preparation of such information for dissemination to the public and in public meetings that may be held or sponsored by DEQ to explain activities at or relating to the Site.

#### SECTION XXVII. MODIFICATION

1. Mutuality. The Parties may modify, rewrite or amend this Consent Order by mutual consent.
2. Material and Non-Material Modification. Material modifications to this Consent Order and any appendix shall be in writing, signed by the Parties, and shall be effective upon approval. Non-material modifications to this Consent Order and any appendix shall be in writing and shall be effective upon notice by duly authorized representatives of DEQ and DuPont. A modification shall be considered material if it fundamentally alters the basic features or requirements of the Work. A non-material modification does not alter the basic features of the selected remedy (e.g. corrections, explanations, and defining terms). Nothing in this Consent Order shall be deemed to alter DEQ's authority to enforce, supervise or approve modifications to this Consent Order.

## **SECTION XXVIII. ADMINISTRATIVE RECORD**

Content of Administrative Record. The administrative record shall be in the form of the VRP Report as described in 9 VAC 20-160-70, and shall contain at minimum, a Site Characterization, a Risk Assessment, a Remedial Action Plan (if needed), a Demonstration of Completion, and Documentation of Public Notice.

### SECTION XXIX. EFFECTIVE DATE

This Consent Order shall be effective when DEQ signs this Consent Order. Within (5) five business days of signing this Consent Order, DEQ will provide DuPont with a copy of the signed signature page of this Consent Order.

### SECTION XXX. CONCLUSION AND ORDER

1. *Conclusions.* Pursuant to Va. Code §§ 10.1-1402(19) - (21), 10.1-1404(B)(3), 10.1-1186(2), and 10.1-1455(F): (a) a Release of Waste Material has occurred at the Site and that such Waste Material is subject to the jurisdiction of DEQ; (b) Remedial Action addressing the Release is required to abate threats to human health and the environment, and to address any potential nuisance, hazard or trespass resulting from the Release; and (c) execution of this Consent Order is in the best interests of the Commonwealth of Virginia.
2. *Finality.* This Consent Order and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties regarding the embodied settlement. The Parties acknowledge that there are no representations, agreements or understandings relating to the Consent Order other than those expressly contained herein. Upon entry, this Consent Order shall constitute a final Consent Order between and among the Parties.

**SIGNATURES**

Each undersigned representative of the Parties certifies that he or she is fully authorized to execute this Consent Order on behalf of such Party and to legally bind such Party.

Executed this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
For the Commonwealth of Virginia  
Department of Environmental Quality

Justin L. Williams, Director  
Land Protection and Revitalization Division

Executed this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
For the Commonwealth of Virginia  
Department of Environmental Quality

Chris Evans, Director  
Office of Remediation Programs

Executed this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
For the Commonwealth of Virginia  
Department of Environmental Quality

Valerie E. Thomson, Director  
Division of Administration

Executed this 15 day of March 20 19.

Tom A. Ei  
\_\_\_\_\_  
For DuPont

Printed Name

Title

Remediation Director

**APPENDIX A**  
**SITE DESCRIPTION**

TOM SHUMATE  
SURVEYOR, INC.  
1000 West Main Street, Waynesboro, VA 22980  
(540)942-2990 Phone / (540)942-2996 Fax

December 5, 2018

Legal Description

External boundary of property owned by A & A T, LLC; identified as Tax Map 82-1-87 and 82-1-87B, fronting on the north west side of Delphine Avenue situated in the Commonwealth of Virginia, City of Waynesboro. Said property shown on drawing by Tom Shumate Surveyor, Inc. entitled "COMPOSITE AND SURVEY DRAWING SHOWING A & A T, LLC PROPERTY LOCALLY KNOWN AS THE BAUGHER FARM", dated September 12, 2018 and revised 12-5-18. Said property also shown on plat by Tom Shumate Surveyor, Inc. entitled "ALTA/ACSM LAND TITLE SURVEY PROPERTY OF E. I. du PONT DE NEMOURS AND COMPANY" Dated January 29, 2004 and revised 4-28-04. Less however, 1.803 acre portion of the property located south western corner and shown on a plat recorded with instrument #140001679 at the Clerk's office of the Circuit Court in the City of Waynesboro, VA. The boundary data shown on the above said drawing and described below was rotated and translated to match coordinates as supplied by AECOM as described in note #7 on the said drawing.

Being more particularly described by Surveyor's Description as follows:

Beginning at a point located at station 268+00, 33' northwest of the centerline and on the northwest right-of-way (R-O-W) line of old State Route 624 now known as Delphine Avenue, a City of Waynesboro street, as shown on plans of project 1122-E-1, sheet 6 and on record at the Staunton, Virginia district office of The Virginia Department of Transportation and referenced at Deed Book 317 Page 369 in the Clerk's Office of the Circuit Court of the County of Augusta, Virginia.

Thence, with three (3) lines of the said R-O-W line, S53°47'34"W 200.36' to a point, located at station 266+00, 45' northwest of said centerline;

Thence, S43°30'59"W 100.72' to a point, located at station 265+00, 33' northwest of said centerline;

Thence, S50°21'33"W 393.52' to a point, located at station 261+06.48, 33' northwest of said centerline;

Thence, leaving said R-O-W line, N63°00'45"W 1097.16' to a point, being the southernmost corner of said 1.803 Acre parcel;

Thence, with three (3) lines of said parcel, N19°27'28"E 228.11' to a point;

Thence, N12°26'14"W 146.18' to a point;

Thence, N41°50'06"W 90.38' to a point in the southern property line of the A & A T, LLC property as referenced at the said City of Waynesboro Clerk's office in instrument #180000015 and at Deed Book 570 Page 540 recorded in the said Augusta County Clerk's Office;

Thence, with three (3) lines of the said A & A T, LLC property, N78°05'30"E 619.19' to a point;

Thence, N11°54'30"W, passing two (2) points at 400.00' and 650.00' representing the south west and north west corners of the 0.861 acre property (said Tax Map 82-1-87B) for an overall distance of 870.00' to a point;

Thence, N21°38'32"E 316.85' to a point in the southeast R-O-W line of the Norfolk Southern Railroad, a 66' R-O-W railroad;

Thence, leaving said A & A T, LLC property and with said R-O-W line N47°42'18"E 1395.26' to a point, in said R-O-W line;

Thence, leaving said R-O-W line and with three (3) lines of Tax Map 72-4-16A1 owned by the City of Waynesboro, Virginia, S35°44'42"E 663.53' to a point;

Thence, S10°32'09"E 715.07' to a point;

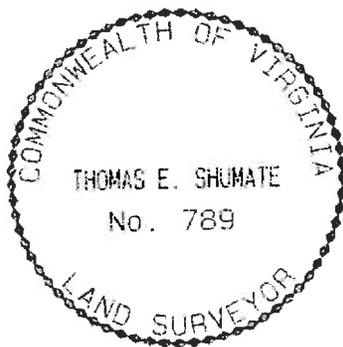
Thence, S44°08'35"E 758.96' to a point located at station 282+21.57, 33' northwest of said centerline, on the northwest R-O-W line said Delphine Avenue;

Thence, leaving said Tax Map 72-4-16A1 and with four (4) lines of said Delphine Avenue, S50°21'33"W 171.57' to a point located at station 280+50, 33' northwest of the centerline of said Delphine Avenue;

Thence, S54°21'48"W 100.24' to a point located at station 279+50, 40' northwest of the centerline of said Delphine Avenue;

Thence, S48°21'17"W 200.12 to a point located at station 277+50, 33' northwest of the centerline of said Delphine Avenue;

Thence, S50°21'33"W 950.00' to the place of beginning, containing a total of 96.610 acres.



## APPENDIX B

### WORK TO BE PERFORMED

This Remediation Consent Order requires DuPont to complete activities to investigate, and as necessary, remediate releases of contaminants at the Baugher Farm site. Such activities include a Site Characterization, Risk Assessment, Remedial Action Plan (if necessary), Documentation of Public Notification, and Demonstration of Completion in accordance with 9 VAC 20-160. Prior to issuance of this Remediation Consent Order, DuPont completed the Site Characterization and Risk Assessment as presented in the Data Gap/Risk Assessment Report. In addition, DuPont has performed remedial actions at the Facility to mitigate sources and reduce risk. Future work to be performed will include post closure care activities associated with the Industrial Waste/Debris Fill Area closure and monitoring of the spring. Each of the tasks to be completed is described below:

Site Characterization (Complete). The Site Characterization documents existing site conditions and identifies potential areas of concern which exceed levels consistent with 9VAC20-160-90. Numerous investigations completed to date have characterized areas of concern and impacted media as summarized in Appendix D of this Consent Order. Data gaps were subsequently identified that were addressed in the *Data Gap Investigation* to refine the overall site characterization, and to provide additional data for an assessment of risk.

Risk Assessment (Complete). This task includes an evaluation of the risks to human health and the environment due to potential releases determined by Site Characterization for both on-site and off-site properties consistent with 9VAC20-160-90. The Risk Assessment also identified remedial levels to be applied in remedial decision making.

Data Gap/Risk Assessment Report (Complete). DuPont submitted a summary report on the findings of the *Data Gap Investigation and Risk Assessment*. The report documented whether environmental concerns have been addressed through past remedial actions, or if additional remedial actions are necessary. The report concluded that no additional remedial action is necessary to ensure protectiveness based on actions previously performed at the Facility. However land use controls and permits are required to ensure ongoing protectiveness.

Remedial Action Plan (if necessary). Several remedial actions have been implemented at the site to date, as summarized in Appendix D of this Consent Order. The *Data Gap/Risk Assessment* concluded that additional remedial actions are not recommended for the site. Therefore there is no requirement prepare and submit a supplementary *Remedial Action Plan*. Proposed Institutional Controls will be described in the Demonstration of Completion. DuPont will work with the owner of the Site to allow the recordation in the Office of the Clerk of the Circuit Court of Waynesboro, the Certificate and an environmental covenant in accordance with the Virginia Uniform Environmental Covenants Act, Va. Code §§ 10.1-1238 et seq., 9 VAC 15-19-10 et seq. to impose any Institutional Controls on the Site as required by the Certificate within the time period specified by the Certificate.

Documentation of Public Notification. Upon the Department's approval of the characterization, risk assessment and completed (or proposed) remedy, DuPont will notify the public in accordance with 9VAC20-160-120 to include:

1. Notification to the local government and adjacent or affected property owners
2. Publishing a local newspaper notice once
3. Providing a 30 day comment period once the notice is issued.
4. Documentation of public notice to the Department including comments received, and copies of any response to comments, as well as an evaluation of the comment's impact on the planned or completed action or actions.

Demonstration of Completion. Upon completion of all investigations and additional remedial actions (if necessary), DuPont shall submit a summary document which shall include the following, as applicable:

1. A summary of all remediation implemented at the site, including a discussion of the remediation systems installed and a description of the remediation activities that occurred at the site.
2. A summary of how site-specific objectives have been achieved, including:
  - a. a description of how onsite sources of contamination have been eliminated or controlled; and
  - a. post remediation sampling results demonstrating that remedial objectives have been achieved and that the migration of contamination has been stabilized.
3. A description of any site restrictions including, but not limited to, land use controls that are proposed for the Certificate.
4. Certification that activities performed at the site pursuant to this Consent Order have been in compliance with all applicable regulations.

Post Closure Care Activities for the Industrial Waste Area/Debris Fill Area. DuPont shall implement post closure care activities under this Consent Order and in accordance with 9VAC20-81-170. Such activities will include maintaining the integrity and effectiveness of the final cover, including necessary maintenance, and implementing a groundwater monitoring system and monitoring the groundwater, as applicable, in general accordance with the requirements in 9VAC20-81-250. Maintenance requirements will also apply to the northern Ash Pile, which was closed in 2011. However, groundwater monitoring will only be required at the Industrial Waste Area/Debris Fill Area (Inert Landfill), whose closure completed in 2015, unless it is determined that additional monitoring is warranted in other areas of the site during activities performed pursuant to this Order. Post closure care and groundwater monitoring will be conducted in accordance with the DEQ-approved "*Post Closure Care Plan*" and a "*Groundwater Monitoring Plan*" which describe post closure care activities for the Industrial Waste Area/Debris Fill Area. The requirements of the Post Closure Plan and Groundwater Monitoring Plan will be included in the Certificate.

Spring Monitoring. DuPont shall continue monitoring spring and downgradient surface water for ammonia and its degradation products as detailed in the *Revised Post Remediation Monitoring Plan*, dated June 3, 2013 and subsequent revisions or modifications as approved by DEQ Valley Regional Office staff. The details of the requirements will be included in the

Certificate. Results will be reported to the Department within 60 days of receipt of validated analytical data.

## APPENDIX C COST REIMBURSEMENT AGREEMENT

DuPont is willing to reimburse VDEQ for the costs of administration and oversight specific to this Agreement. VDEQ accepts this reimbursement pursuant to the Board's authority in Va. Code §§101 1402(19) and (21) and not pursuant to VDEQ's authority to collect a registration fee in 9 VAC 20 160 60.

VDEQ seeks reimbursement for Costs incurred and/or to be incurred pursuant to this specific Agreement for administration and oversight of the Data Gap Investigation at the Site.

Within (30) thirty days after the Effective Date DuPont shall pay to VDEQ the sum of \$9,761.44 for costs incurred. Thereafter on the anniversary of the Effective Date for each subsequent year, DuPont shall pay to VDEQ an amount to be determined by VDEQ and DuPont as payment for costs to be incurred for administration and oversight of the Work scheduled to occur in the succeeding 365 days.

VDEQ and DuPont shall enter negotiations regarding the payment amount for subsequent years at least 30 days prior to the anniversary of the Effective Date.

Payment shall be made by check, certified check, money order, or cashier's check payable to the Treasurer of Virginia and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

The check, certified check, money order, or cashier's check shall reference this Administrative Agreement.

Any funds submitted by DuPont to cover costs that are unused by VDEQ and remain after Certificate of Satisfactory Completion of Remediation shall be remitted to DuPont within (60) days of the issuance of the Certification of Satisfactory Completion of Remediation.

## APPENDIX D HISTORICAL ACTIVITIES

### Former DuPont Baugher Farm Facility Waynesboro, VA

#### Background

DuPont purchased the Baugher Farm site in 1948 for the original purpose of water supply development for the former DuPont Waynesboro Plant. Ultimately the site was used for waste management and recycling operations. In 2004, the Baugher Farm property ownership was transferred from DuPont to Invista.

#### Property Description

The former DuPont Baugher Farm site is located approximately 1.8 miles south of the former DuPont Waynesboro Plant and is situated along the west toe of the Blue Ridge Mountains. It is characterized by a topographic high in the center of the facility, which drops off approximately 65 feet to the northwest towards the South River. Both surface water and groundwater flow to the north where an intermittent spring discharges on the north side of the property. Significant features at the site include two reconsolidated and closed ash/debris landfills, two groups of small buildings and wooded areas.

#### Historical Operations

The property was used for the management of both solid and liquid wastes generated at the Waynesboro Plant beginning in 1950 and included the following management techniques and waste streams:

- Land disposal – power house ash, coal reject, debris
- Land application – wastewater treatment sludge, byproduct lime, acetation wastewater
- Pond storage – wastewater treatment sludge, byproduct lime, DMF and DMAC wastes
- Tank storage – fuel, DMF and DMAC wastes, silicone waste
- Incineration – liquid wastes including wastewater treatment sludge, DMF and DMAC wastes, finishing oils, and nylon plop

Below are descriptions of each of the waste management units at the site.

*Fly Ash Mounds* - Beginning in the early 1950s, DuPont began to store fly ash, which was produced from the Waynesboro Plant power house, at Baugher Farm. Two mounds of fly ash, also referred to as Pre-Regulation Industrial Waste Units, were deposited in the southeastern part of the site near the site main entrance. It is not known precisely when the power house fly ash disposal ended, but records indicate that the practice ceased by the 1960s. As reported in the *Groundwater and Waste Management Unit Assessment* (DuPont, 1989), ash created from the Nichols Herreschoff furnace at the Waynesboro Plant mercury retort process was disposed of at the site for a brief period between 1948 and 1950. It was reported that the retort ash contained less than 0.1% mercury.

*Inert Landfill* – DuPont and INVISTA operated a landfill for the disposal of inert solid wastes located next to the southern fly ash pile from the 1980's to 2014. Wastes that are disposed here

include bricks, cement, soil, and other demolition debris. Metal debris was not included in this waste stream. All soils were tested by laboratory analysis before final placement at the landfill.

*Byproduct Lime Disposal Areas* - During the same time period, a lime settling pond and byproduct lime disposal area were present on-site. The former lime settling pond was located just south of the current Plop grinding facility. The byproduct lime area was located in the south-central portion of the site between the two ash mounds. These wastes may be related to the acetylene gas production at the Waynesboro Plant.

*Incinerator Area* - In 1958, an incinerator was installed for the disposal of the acetate-based sludge that was produced by the newly constructed wastewater treatment plant (WWTP) at the Waynesboro Plant. The incinerator burned wastes containing dimethyl formamide (DMF); dimethylacetamide (DMAC); waste lubricants including coconut, peanut, and mineral oils; solid waste Nylon (Plop); and waste-paper products. Some of the liquid wastes were described as "boil-out", containing DMAC and DMF that resulted in the cleanout of columns in the Solvent Recovery unit on the plant.

In 1970, DuPont ceased the use of acetate as the primary compound for the manufacture of fabrics. The new process involved the production of Orlon, which generated wastes that were removed by the WWTP. WWTP sludges generated from this process were then incinerated at Baugher Farm. Also in 1970, the Monroe Overdraft Incinerator was installed at Baugher Farm in response to State Air Regulations, which shut down the two tee pee incinerators at the plant.

Liquid wastes were transported to Baugher Farm from the plant by tanker trucks and transferred to a holding tank. Liquids were then injected into the burner at the feed area, which was covered with either pavement or asphalt. The feed area was surrounded on three sides by a runoff collection trench, which fed into a sump. This collection trench and sump were designed to collect spillage around the feed area. A fueling station was once located behind the incinerator but was decommissioned; however, no underground or aboveground tanks are present. An underground silicon waste tank was reported at the incinerator; however, it has been emptied and decommissioned.

The sump was routinely cleaned out, and liquid wastes were fed back into the incinerator. Ash from the incineration process was cleaned out on a regular basis and taken to the City of Waynesboro Municipal Landfill. The incinerator was closed and shut down in 1988 and subsequently dismantled.

*Baugher Farm Pond* - In 1965, DuPont constructed a holding pond for liquid wastes prior to land application. Wastes stored in the pond consisted of various liquid wastes from the Waynesboro Plant, which contained DMAC and DMF, and WWTP sludge. The pond was located in the central portion of the site at a topographic high point on-site, and wastes were land applied on the slope to the north in the area between the pond and the railroad. The pond was originally unlined when it was constructed and was underlain by natural silty clay. When leakage became a concern, the pond was temporarily closed and lined with a poly vinyl chloride (PVC) liner. The date of the lining installation could not be verified but is believed that it occurred in the late 1960's. In 1978, the contents were emptied and the pond was filled with clean soil.

*Land Application Areas* - Two areas located along the northwestern part of the site were used for the application of lime pond contents and acetate-based wastewater. The lime pond disposal area was reported to have received sludges from the former lime pond at the site. The acetate sludge application area received waste sludges associated with the Waynesboro Plant.

*Plop Grinding Facility* - In 1978, a facility was established at the site to recycle waste Nylon (Plop). Plop was brought to the site from the Waynesboro Plant and from other Nylon manufacturing facilities for grinding and processing for re-use. This process continued until early 2016.

*Filter Cleaning* - In the 1980s, an operation to clean positional filters used in Lycra production was present to the north of the pond near the Plop facility. Filters were immersed in baths of DMAC for cleaning. A 1,000-gallon DMAC supply tank fed the bath, and used DMAC was collected in another 1,000-gallon tank. Waste DMAC was incinerated in the Baugher Farm Incinerator. This process was decommissioned by the early 1980s.

#### Previous Investigations

Beginning in 1982, various inspections and sampling activities have been conducted at the site. Below is a description of these activities.

*1982 Joint Site Inspection* - The first environmental investigation to take place at Baugher Farm was a joint inspection by the U.S. Environmental Protection Agency (EPA) and the Virginia Water Control Board (VWCB). Two soil samples were collected, one onsite and another offsite, and analyzed for EPA priority pollutant metals and base-neutral acid extractable compounds. The on-site sample contained barium and mercury above the detection limit and tentatively identified organic compounds. Available records do not indicate the specific collection locations for these samples.

*1987 Preliminary Site Inspection* - In 1987, the VDWM conducted a PSI. No sampling was conducted during this visit. However, a black oily substance was observed behind the incinerator.

*Incinerator Area* - In March 1988, the incinerator was shut down and decommissioned. Following the closure, DuPont collected soil samples to assess potential impact of the incinerator operations. The results showed that approximately 1,000 to 1,500 cubic yards of soil behind the incinerator were impacted by DMF and other organic constituents. However, sampling of a downgradient well indicated that the groundwater had not been impacted. A bioremediation study was conducted by DuPont Environmental Remediation Services (DERS), which concluded that biotreatment of the soils, either in-situ or ex-situ, would be an effective remediation method. The study further concluded that the constituents are readily biodegradable when exposed to adequate air, nutrients, and microorganisms. However, the bioremediation was not implemented at that time.

*DuPont Preliminary Site Investigation (PSI)* - In 1988, DuPont performed a PSI, which was the first comprehensive site evaluation. DuPont drilled three geotechnical soil borings to bedrock for refusal to characterize the site hydrogeology. Using the information obtained from those

borings, DuPont installed seven monitoring wells at locations adjacent to former waste management areas. The spring at the site was also sampled. The sampling was repeated again in December 1988, with the addition of a surface-water sample downgradient of the spring. No soil samples were collected during this investigation.

The results indicated low levels of organic constituents at MW-6, MW-7, and the spring. Inorganic constituents including arsenic, barium, nickel, and ammonia were also detected at these locations. The results from PSI were incorporated into the Screening Site Investigation (SSI) that was prepared by the VDWM and submitted to EPA.

*Virginia Department of Waste Management (VDWM) SSI* - As part of the Superfund site screening process, the VDWM conducted an SSI using the information obtained from the DuPont PSI and the previous site inspection and sampling activities performed by the VDWM and EPA. The SSI report, which was dated September 1990, concluded that impacted groundwater at MW-6 is related to the former waste pond, but the constituents observed at the spring may indicate another source.

*Spring Sampling* - Sampling conducted by Invista in 2005 and 2006 showed that concentrations of ammonia, nitrates, and metals were present in the spring water. In November 2008, DuPont sampled the spring and obtained similar results. In addition to the sampling of the spring water, DuPont surveyed all of the site wells and conducted a round of water-level measurements to determine the flow direction of groundwater at the site.

*Site Characterization and Assessment Plan (SCAP) Investigation* - The investigation was implemented in two phases beginning in April 2009. The first phase consisted of a sitewide assessment to identify potential impacts to groundwater. The second phase consisted of a drilling and sampling program to investigate former operational units at the site. The second phase was completed in May 2011.

The report concluded that shallow water from the site is not responsible for the ammonia concentrations observed at the spring and that ammonia and its decomposition products are not migrating off-site and pose no risk to off-site receptors. The area-specific investigations concluded that no further investigation was needed at the former operational units, however mercury detected in groundwater near the Industrial Landfill (previously referred to as inert) warranted further evaluation. Recommendations were made to prevent potential use of spring water and cover/stabilize the Pre-regulation Industrial Waste Disposal Area.

*MW-11 Investigation* - In November 2012, two wells were drilled downgradient of MW-11 to investigate the source of mercury that was detected during the SCAP. The investigation concluded that the extent of mercury was limited to the area around MW-11 but no source was specifically identified. However evidence gathered during the SCAP suggested a possible source in the Inert Landfill.

*Industrial Waste Area/Debris Fill Area Hydrogeologic Investigation* - The investigation was aimed at establishing a post-closure monitoring network and identifying a possible flow zone in the vicinity of MW-11 which had been impacted by mercury. Based on the results of the investigation, it was concluded that the mercury was limited to a thin waste layer through which MW-11 was screened and was not representative of the uppermost aquifer beneath the landfill.

The investigation also further defined the spatial extent of landfilled material through soil borings and test pits to aid in the closure design of the Inert Landfill/Ash Pile. The results of the investigation were reported in the *Pre-Regulation Industrial Waste Area (Ash Pile) and Debris Fill Area (Inert Landfill) Closure Plan*, dated November 2014.

*Data Gap Investigation/Risk Assessment* – In its review of previous investigations, the DEQ identified data gaps that existed in the data set used for site characterization and risk assessment. DuPont conducted a thorough review of the data set and additional sampling was performed under the *RCO Data Gap Investigation Workplan* in March 2017. The enhanced data set was then used to complete characterization of the site, update the site conceptual model, and perform a risk assessment. As reported in the *RCO Data Gap Investigation/Risk Assessment Report* dated January 2018, no unacceptable risks are present at the site under the current land use. Institutional controls should be established to ensure future protectiveness.

#### Corrective Actions Conducted to Date

DuPont has implemented corrective actions at the site to mitigate potential releases to the environment. Below is a summary of actions complete to date.

*Sludge Pond Closure* - In 1978, the pond contents were pumped out and properly disposed off-site. After the contents of the pond were removed, the pond was backfilled with clean fill, compacted, and seeded.

*Lime Pond Closure* – DuPont pumped out the contents of the Lime Pond and backfilled with clean fill in the 1960's.

*Incinerator Area Bioremediation* – Upon closure in 1988, DuPont conducted a study to evaluate the feasibility of bioremediation technology to reduce DMF concentrations in soil. The study concluded that the constituents were readily biodegradable under given conditions. Although no official bioremediation program was initiated, DuPont planted a stand of willow trees in the area which appears to have enhanced the degradation and uptake of nitrogen in the soil. Sampling results from the 2011 SCAP Investigation indicated that the constituents had degraded and were no longer present in soil or groundwater.

*Pre-Regulation Disposal Area (Ash Pile) Closure* - In 2011, under the direction and oversight of DEQ-VRO DuPont completed the closure of the Ash Pile on the north side of the site entrance road. The purpose was to relocate and consolidated ash, and to stabilize and re-grade the slopes of the Ash Pile. The closure was completed with a 24" soil cover system and establishment of erosion and sedimentation control features.

*Spring Remediation* – In 2013, under the direction and oversight of DEQ-VRO DuPont performed corrective actions at the spring which is impacted by ammonia. The corrective action was completed by filling in the spring pool with stone, installing a rock aeration bed to enhance de-nitrification, and planting vegetation to enhance nitrogen uptake. Follow-on surface water monitoring has shown that the remedy has been effective at enhancing the natural biodegradation of ammonia.

*Industrial Waste Area/Debris Fill Area* – In 2014-2105, under the direction and oversight of DEQ-VRO DuPont conducted corrective actions to mitigate the mercury detected near the Inert Landfill by closing both the inert landfill and the adjacent ash pile. The closure consisted of consolidation of both units to cover the impacted area, installation a low permeability geo-composite cover, drainage improvements, and groundwater monitoring.

Documents Submitted to Date

The table below summarizes key documents that have been submitted by DuPont concerning corrective actions at the Baugher Farm facility.

Table 1. Document Summary Table

<b>Title</b>	<b>Date</b>
Preliminary Site Investigation for Baugher Farm Site	Apr 1988
Final Report, Results of the Biodegradation Feasibility Assessment Study for the Baugher Farm Overdraft Incinerator Area	Dec 1989
Preliminary Sampling and Analysis Plan for the Baugher Farm Spring	Oct 2008
Spring Sampling Results	Dec 2008
Site Characterization and Assessment Plan	Jan 2009
Site Characterization and Assessment Report	Sep 2011
Proposed Remedial Action Plan for the Mitigation of Ammonia in Spring Water	Sep 2012
Completion Report, Baugher Farm Pre-Regulation Disposal Area Closure	April 2012
Work Plan to Investigate Mercury at MW-11	July 2012
Investigation Report for Mercury at MW-11	May 2013
Revised Post Remediation Monitoring Plan	June 2013
Work Plan for Hydrogeological Investigation	May 2014
Pre-Regulation Industrial Waste Area (Ash Pile) and Debris Fill Area (Inert Landfill) Closure Plan	Nov 2014
Closure Report, Debris Fill and Pre-Regulation Industrial Waste Areas	May 2016
Post-Closure Care Plan	Sep 2016 (rev. Mar 2017)
Groundwater Monitoring Plan, Pre-Regulation Industrial Waste Area/ Debris Fill Area dated September 2016 and revised March 2017	Sep 2016 (rev. Mar 2017)
RCO Data Gap Investigation Workplan	January 2017
RCO Data Gap Investigation/Risk Assessment Report	January 2018